Metropolitan Transit System

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

Policies and Procedures No. 61

SUBJECT: **Board Approval:** 05/17/12

NEWSRACKS ON MTS-OWNED OR -CONTROLLED PROPERTY

PURPOSE:

This policy is to preserve and promote the public health, general welfare, and safety of persons using the public transportation system and to foster the aesthetics of public transportation system facilities by providing guidelines for newsrack placement in and around these facilities.

STATEMENT OF INTENT:

The uncontrolled placement and maintenance of newsracks can create a danger to the safety and welfare of the San Diego Metropolitan Transit System (MTS) customers, employees, and assets including the obstruction of safe and efficient flow of pedestrian and vehicle traffic.

POLICY:

61.1 DEFINITIONS

For purposes of this policy, the following definitions shall apply:

a. "MTS" shall mean the San Diego Metropolitan Transit System and all of its subsidiaries.

b. "Policy" shall mean and refer to this policy on newsracks on MTS-owned or -controlled property.

c. "CEO or Designee" shall mean the Chief Executive Officer of MTS or mean every member, officer, employee, or consultant the CEO appoints as his/her representative.

d. "MTS-owned or -controlled property" means any location designated for bus or rail vehicle operations including loading or unloading of passengers, layover, or maintenance owned, operated, or controlled by MTS.

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities.

MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.

e. “Bus stop or bus stop area” means any location designated for passenger loading or unloading of buses owned, operated, or controlled by MTS and any layover location owned, operated, or controlled by MTS.

f. “Newsrack” means a self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution of newspapers, magazines, periodical or other publications to the public.

g. “Newsrack area” means a defined area of MTS-owned or -controlled property that has been identified and authorized for placement of newsracks.

h. “Publisher” means the person who publishes a newspaper, magazine, periodical or other publication that is displayed and offered for the sale or distribution in a newsrack.

i. “Publication” means any newsrack, magazine, periodical, leaflet, or any other document offered for sale or distribution to the public.

j. “Newsrack slot” means the specific site within a newsrack area that is assigned for the placement of a newsrack.

k. “Nudity” shall mean the showing with less than a fully opaque covering of the genitals, pubic hair, perineum, anus, or anal region of any person, or any portion of the breast at or below the areola thereof of any female person.

l. “Sexual conduct” shall mean an act of sexual intercourse, masturbation, sodomy, bestiality, anal intercourse, oral copulation, flagellation, or other act of sexual arousal involving any physical contact with a person’s clothed or unclothed genitals, pubic region, pubic hair, perineum, anus or anal region, or, if such person be a female, breast.

m. “Pictorial material” shall mean any material suggesting or conveying a visual image, and includes, but is not limited to, a photograph, painting, or drawing.

61.2 GENERAL PROVISIONS

Newsracks may not be placed in whole or in part upon MTS-owned or -controlled property except as follows:

a. Newsracks shall only be allowed at MTS-designated and approved newsrack areas. MTS reserves the right to amend or modify its approved newsrack areas as well as accept or reject final placement based on passenger flow, safety, and security issues, emergency evacuations, construction, and other reasons deemed to be in the traveling public’s best interest.

b. Newsracks shall only be allowed if publisher complies with existing MTS Policies and Procedures No. 50 Engineering and Construction Expense Cost Recovery for Plan Review, Real Estate Action, and Right of Entry Permits. Prior to placement of a newsrack on MTS-owned or -controlled property, the publisher shall request and have received a notice to proceed to access MTS-owned and -controlled property. Newsracks shall not be bolted, affixed, or placed on or to any MTS-owned or -controlled property without prior written permission from MTS. MTS reserves the right to require affixing a newsrack in a newsrack Slot to ensure proper safety of customers, employees, and assets.

c. Newsracks shall not be placed anywhere that impedes the mobility of customers or inhibits customers protected under any Americans with Disabilities Act (ADA) requirement.

61.3 APPLICATION AND PERMITTING

a. Prior to placement of a newsrack on MTS-owned or -controlled property, the publisher shall apply for and obtain a permit with MTS. A sample application is attached (Attachment A).

b. Each newsrack shall have a permit sticker issued by MTS affixed to it in a readily visible place setting forth the name, address, working telephone number, and working e-mail address of the publisher where official correspondence regarding the newsrack will be sent. Each sticker will have a unique permit number for tracking current status.

c. Publisher shall update information required in this section within five (5) business days of any change of information.

d. Any violation of any provision of this section may result in removal of affected newsrack(s) pursuant to Section 61.6a below.

61.4 INSTALLATION & MAINTENANCE

a. Publishers shall ensure that newsrack(s) are stocked with current publications. A newsrack that remains empty for a period of 10 consecutive calendar days shall be deemed abandoned. MTS may summarily remove an abandoned newsrack.

b. Publishers shall be solely responsible for the maintenance and repair of all newsracks installed on MTS-owned and -controlled property or on behalf of the publisher. Newsracks shall at all times be maintained in a neat and clean condition and in good repair. Specifically, newsracks must be kept free of trash, debris, dirt, grease, and graffiti without chipping, peeling, cracking, or fading paint in visibly painted areas, and without rust or corrosion.

c. Each newsrack shall have affixed to it in a readily visible place a notice setting forth the name, address, and working telephone number for customers to report a malfunction or obtain a refund.

d. Commercial advertising or material dealing with anything other than the name of the publication contained within the newsrack shall not be displayed on the outside of any newsrack.

e. All newsracks must follow appropriate physical and removal standards for newsracks at the discretion of MTS to provide stability and safety. All newsracks must be appropriately weighted and secured at the discretion of MTS to provide stability and safety to prevent theft. MTS reserves the right to amend or modify physical, removal, or weighted and secured standards to ensure proper safety of customers, employees, and assets.

61.5 MATERIAL DEPICTING NUDITY AND SEXUAL CONDUCT IN PUBLICATIONS

a. No newsrack will be permitted that knowingly places or maintains in any newsrack which rests in whole or in part, upon, in, or on any portion of MTS owned or controlled property, or which projects onto, into, or over any part of MTS owned or controlled property, any publication or material which while in said newsrack exposes to public view:

(1) Any statements or words describing explicit sexual acts, sexual organs, or excrement where such statements or words have as their purpose or effect sexual arousal, gratification, or affront.

(2) Any pictorial material depicting nudity where such material has as its purpose or effect sexual arousal, gratification, or affront.

(3) Any pictorial material depicting explicit sexual conduct where such picture or illustration has as its purpose or effect sexual arousal, gratification, or affront.

61.6 VIOLATIONS

a. MTS is authorized to remove, without prior notice, any newsrack placed on MTS owned or controlled property for the following reasons:

(1) A newsrack is placed without first obtaining proper MTS Right-of-Entry Permit(s).

(2) The placement of the newsrack poses a threat to the public health, safety, or welfare.

(3) MTS is unable to contact the publisher via email or written notice for a newsrack based exclusively on information provided in a current permit, related to a current permit.

(4) A permitted newsrack remains empty for ten consecutive calendar days.

(5) A publisher failed to comply with a Notice of Violation within five business days after notification.

(6) Any newsrack in violation with Section 61.5a of this policy.

b. If a publisher fails to comply with any of the requirements of this policy, MTS shall notify the publisher and the publisher will have five (5) business days to correct the violation(s).

(1) Upon removal, MTS shall notify the publisher that the newsrack has been removed, the reason for removal, and the procedure for reclaiming the newsrack.

(2) If the publisher fails to reclaim the newsrack within 30 days of notification of removal and does not pay in full all reasonably incurred removal, storage, and administration fees the newsrack and its contents will be deemed to have been abandoned and may be disposed of by MTS.

61.7 FEES

a. MTS shall charge fees sufficient to recover the costs of removal, eliminating any potential hazards, cost to maintain facilities related to newsrack storage, and administration of newsrack permitting, and all reasonable fees associated with administering newsracks on property MTS owns or controls. MTS may review and adjust the fees sufficient to recover costs on an annual basis (Attachment B).

b. A publisher that applies for a permit that has failed to pay any outstanding fees may be denied a newsrack permit for noncompliance with this policy until all fees are paid in full and all other permit requirements are met.

61.8 NEWSRACKS AT BUS STOPS LOCATED IN JURISDICTIONS THAT DO NOT HAVE APPROVED NEWSRACK POLICIES

It is not the intent of this policy for MTS to regulate or require permits for locations where MTS has no easements and no structures other than a bus stop sign; such locations are instead subject to local governmental regulations and control. Notwithstanding the above, MTS provides the following guidance to local jurisdictions regarding newsracks near MTS bus stops:

a. No newsrack should be installed within the 5 feet ahead of or 65 feet to the rear of any bus sign or anywhere in an a bus stop area along a curb or where there is no curb to the edge of the pavement; and no closer than 10 feet to the curb within this distance.

b. Newsracks shall not be placed anywhere that impedes the mobility of customers or inhibits customers protected under any ADA requirement.

c. If a publisher fails to comply with the requirements of this policy, MTS reserves the right to notify the publisher, and the publisher will have 5 business days to correct the violation(s) or face removal of the newsrack.

(1) Upon removal, MTS shall notify the publisher that the newsrack has been removed, the reason for removal, and the procedure for reclaiming the newsrack.

(2) If the publisher fails to reclaim the newsrack within 30 days of notification of removal and not pay in full all reasonably incurred removal, storage, and administration fees, the newsrack and its contents will be deemed to have been abandoned and may be disposed of by MTS.

Original Policy Adopted on 05/17/12

Attachments: A. Newsrack Permit Application
B. Newsrack Fee Schedule

Metropolitan Transit System

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

NEWSRACK FEE SCHEDULE

Item	Fee
Right-of-Entry Permit (Per private or public party)	$500.00
Permit Fees (Per Newsrack)	$200.00
MTS Issued Identifier (Sticker)	$15.00
Replacement of MTS Issued Identifier (Sticker)	$65.00
Order to Correct (Paper)	$35.00
Order to Correct (Electronic)	$25.00
Graffiti/Sticker/Trash/Dirt Abatement (Per Occurrence)	$100.00
Impound Fee (Cost to Repair MTS-Owned or -Controlled Property upon removal of newsrack)*[1]	$400.00
Removal Fee	$100.00
Storage Fee (30-Day Period)	$100.00
Disposal Fee	$150.00

[1] Payment may be required in advance through a bond, deposit, or other security instrument.

MTS NEWSRACK PERMIT APPLICATION

Please print clearly all information. Please note publishers must comply with MTS Right-of-Entry process.

ORGANIZATION INFORMATION

Publisher Name

Street Address

City, State, and Zip

Contact

Phone Number _____ E-mail Address _____

PUBLICATION INFORMATION & WHERE PUBLISHER DESIRES TO PLACE THEIR PUBLICATION(S)

Publication Name	Publication Frequency	Requested MTS Newsrack Area
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

PERMIT FEES

A permit is required for each newsrack, newsbox, shelf, or bin. Publisher must include a check with the completed application for the required permit fee(s). Check(s) must be made payable to Metropolitan Transit System.

Number of Permits Requested		Cost Per Permit		Total Permit Cost
	X		**=**	

NOTICES IN CASE OF NON-COMPLIANCE

How would you wish to be notified of any notices or orders? Cost for publisher to be notified via U.S. Mail will be $35 and cost to be notified via electronic posting will be $25. Please indicate your preference by checking one. Notices will be delivered to the Organization Information listed on this form. Publisher is required to update the information within 5 days of changes.

□ U.S. Mail/registered/return receipt □ Electronic Posting

CERTIFICATION

By submitting this application the publisher/newsrack owner certifies that any newsrack will be placed, installed, used, and maintained in accordance with the rules and policies of the San Diego Metropolitan Transit System (MTS) and in such a manner as not to interfere with the safe and efficient operation of MTS. Furthermore the newsrack owner agrees to indemnify and hold harmless MTS, its officers and employees from and against any loss, liability, or damage, including expresses and costs, for bodily or personal injury and for property damage sustained by any person as a result of the installation, use, or maintenance of a permitted newsrack on MTS property.

Print Name _____ Signature _____ Date _____

Note: All newsrack permits expire one-year from the date of issue. Publishers may renew by submitting a new permit application 30-days prior to expiration. Mail this completed application to: MTS, 1255 Imperial Avenue, Suite 1000, San Diego, CA, 92101.